**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.4666 OF 2005**

Sandip Dadaso Gujale. ... Applicant.
Versus.
The State of Maharashtra. ... Respondent.

Shri Umesh Mankapure for the Applicant.

Shri K.V.Saste, A.P.P. for the Respondent.

**CORAM : ABHAY S. OKA, J.**

**DATED : 25th July, 2005.**

**P.C.:**

1. Heard the learned Counsel for the Applicant and the learned A.P.P. for the State.

2. The offence alleged against the Applicant and other co-accused is under section 302 of the Indian Penal Code. The F.I.R. was filed on 23rd May 2005 by the deceased. Initially offence was registered under section 326 and 504 of the IPC. In the F.I.R. the deceased has described the assault made by co-accused Sunil. The deceased has not stated the name of the Applicant. The deceased has not narrated that the Applicant was present. The first informant died on 26th May 2005. The statements of two witnesses Rafiq and Akhtar were recorded. In the said statements there is no reference to the Applicant. In the supplementary statements of the said two witnesses recorded on 28th May 2005, the said witnesses have stated that the

co-accused Sunil made a fatal attack on the deceased by a wooden stick and at that time the Applicant was present. As the deceased himself has not named the Applicant and some role has been ascribed to the Applicant two days after the death of the victim, the prosecution story so far as the Applicant is concerned becomes doubtful. Even taking the statements of the witnesses as true, at the highest, it can be said that the Applicant was present and he encouraged or instigated the co-accused to assault the deceased. However, he has played no direct role in the assault on the deceased. In my view a case is made out for enlarging the Applicant on bail and accordingly the following order is passed:

(i) The Applicant shall be enlarged on bail in connection with C.R.No.18 of 2005, Kupwad Police Station, Dist.Sangli, subject to furnishing a personal bond of Rs.10,000/- with one or two sureties in the like amount.

(ii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(iii) The Applicant shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

(iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(v) Application is disposed of in above terms.

**Judge.**